

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JOHN B. ROBBINS, JUDGE

DIVISION III

CA 07-917

JANUARY 23, 2008

NICOLE SPERKA

APPELLANT

APPEAL FROM THE BAXTER  
COUNTY CIRCUIT COURT  
[NO. JV2006-90]

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

HONORABLE GARY ISBELL,  
JUDGE

APPELLEE

AFFIRMED

Appellant Nicole Sperka appeals from the termination of her parental rights to JS (born 6/2/99) and BS (born 7/18/01). She challenges the sufficiency of the evidence to support the termination. We affirm.

The Arkansas Department of Human Services (DHS) received a report on April 25, 2006, that JS's cheek was bruised as the result of being slapped by his father, Joseph Sperka. Investigator Gabrielle Welch visited the home and observed the bruise and some marks on the boy's left arm. She also observed that the house was filthy. Clothes were strewn throughout the home, cat feces and dog food were on the kitchen floor, spoiled food was in the freezer, and the bathroom was unsanitary. Nicole Sperka and the children went to a shelter, and Nicole stated that she was leaving Joseph and would obtain a restraining order

against him. She and the children returned home not long after that, and Joseph Sperka moved in with relatives. He was charged with battery in connection with the slapping incident.

In May 2006, DHS received two additional reports concerning JS. Caseworker Patricia Blades visited the home and saw that JS had scratch marks and bruises on his arms. A few days later, she learned that Nicole had called 911 after JS threw a water jug at her and she could not get him under control. Nicole apparently took six-year-old JS to a local hospital, where he spent a night alone. JS told Blades that he threw a water bottle at his mother because she tried to make him go to his room where there was “cat poop on the floor” and because she threw his blanket onto the back porch. He also told Blades that his father had been coming to the house to eat and that his father spanked him every day and slapped him a lot.

On the strength of an affidavit setting forth the above facts, the circuit court entered an emergency order on May 18, 2006, placing JS and BS in DHS custody. The children were adjudicated dependent-neglected on June 12, 2006. The goal of the case was reunification, and the court ordered Nicole and Joseph to submit to psychological evaluation and attend parenting classes. DHS developed case plans and provided services to facilitate these requirements. Psychological evaluations conducted in September and October 2006 recommended therapy for Nicole and psychotropic medications for Joseph.

On May 21, 2007, the court entered a permanency-planning order that changed the goal of the case to termination of parental rights. The order stated that the parents had not

complied with the case plan and only sporadically worked on its goals. A termination hearing was set for June 4, 2007.

The hearing was actually held on June 14. Both parents were present with counsel. DHS witnesses testified that the children had previously been in foster care for a six-month period in 2002-03, after which they were returned to Joseph and Nicole.<sup>1</sup> Following the present removal, the children were diagnosed with reactive attachment disorder (RAD) as the result of physical abuse and trauma and their physical and emotional needs not being met. Both were receiving therapy. According to social worker Karen Moore, the children needed parents who were in charge and could provide a stable, structured, consistent, and loving home. She testified that Nicole and Joseph had made only “minimal progress” in learning how to deal with the children and that it was no longer in the children’s best interest to be reunified with their parents.

DHS caseworker Patricia Blades testified that Nicole was employed and had attended parenting classes and that the environmental issues in the home had improved. However, she also testified that, in the previous year, Nicole had moved six times, including moving back in with Joseph despite being afraid of him and their relationship being unstable. Blades further said that, during one of Nicole’s visits with the children, Nicole became angry and “jerked” BS, then justified her behavior by saying that BS was falling off a chair. On another visit, Nicole could not control the children and Blades had to intervene. Blades also said that

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<sup>1</sup>The reason for the 2002-03 removal is not stated in the record, but it is implied that it was due to environmental neglect.

Nicole told her that the marks Blades observed on JS's arm in May 2006 were from Nicole trying to hold him down "because the boys just wouldn't listen to her." Blades recommended that the children be adopted and said that both were adoptable.

DHS also placed into evidence Nicole's September 2006 psychological evaluation that described her as "a seething cauldron of anger under a calm exterior." The evaluation stated that, until Nicole came to grips with her own problems, "it would probably be impossible for her to reach out in a nurturing way to her children." It was recommended that Nicole's issues be addressed in therapy before the family was reunited. However, by the time of the June 2007 hearing, Nicole had not provided Blades with any indication that she was participating in counseling. Nicole explained that she had been to some counseling appointments but had not been able to find a suitable counselor. However, she also said that she had not complied with the case plan in this regard "because every single time I'd go to a counselor, within 20 minutes they'd give me the normal stereotypical diagnosis . . . ."

On June 21, 2007, the trial court terminated Nicole and Joseph's parental rights.<sup>2</sup> The court found that it was contrary to the children's best interest to return them to their parents; that DHS had made reasonable efforts to reunite the family; and that the children were adoptable. The court also cited the following grounds for termination: 1) the children had continued out of the parents' custody for more than twelve months and, despite a meaningful effort by DHS to rehabilitate the parents and correct the conditions that caused removal,

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<sup>2</sup>The termination of Joseph's rights is not part of this appeal.

those conditions had not been remedied; and 2) the mental instability of both parents, their inability to interact appropriately, their failure to comply with the case plan and court orders, and other issues that arose subsequent to filing the original dependency-neglect petition demonstrate that return of the children to their parents' custody is contrary to their health, safety, and welfare and that, despite the offer of appropriate family services, the parents have manifested the incapacity to remedy those subsequent issues or rehabilitate their circumstances. Nicole filed a timely notice of appeal from the termination order. She argues that the order was not supported by clear and convincing evidence.

We review termination of parental rights cases de novo. *Meriweather v. Ark. Dep't of Health & Human Servs.*, 98 Ark. App. 328, \_\_\_ S.W.3d \_\_\_ (2007). Termination of parental rights is an extreme remedy and in derogation of the natural rights of parents, but parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Id.* Grounds for termination of parental rights must be proven by clear and convincing evidence. *Id.* Clear and convincing evidence is that degree of proof that will produce in the fact-finder a firm conviction as to the allegation sought to be established. *Id.* When the burden of proving a disputed fact is by clear and convincing evidence, the appellate inquiry is whether the trial court's finding that the disputed fact was proven by clear and convincing evidence is clearly erroneous. *Id.* We give due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Id.* Where there are inconsistencies in the testimony presented at a termination hearing, the resolution of those inconsistencies is best left to the trial judge, who heard and observed these witnesses first-hand. *Id.* A finding

is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.*

The goal of Ark. Code Ann. § 9-27-341 (Supp. 2007) is to provide permanency in a minor child's life in circumstances in which returning the child to the family home is contrary to the minor's health, safety, or welfare and the evidence demonstrates that a return to the home cannot be accomplished in a reasonable period of time as viewed from the minor child's perspective. Ark. Code Ann. § 9-27-341(a)(3). Parental rights may be terminated if clear and convincing evidence shows that it is in the child's best interest. Ark. Code Ann. § 9-27-341(b)(3). Additionally, one or more statutory grounds must be shown by clear and convincing evidence.

In this case, the children have been out of the home for over one year. Nicole continued to engage in inappropriate anger and physical contact with the children, and the children were consistently out of control around her. Most importantly, there was a complete failure on her part to follow that portion of the case plan that recommended she participate in counseling to resolve her anger issues before reunification could occur. Finally, her home life was unstable. She moved six times in one year; had moved back in with Joseph, who was charged with battery in connection with slapping JS; and she had not yet resolved her relationship with Joseph. These factors, along with the caseworker's testimony that the children were adoptable, convince us that the trial court's termination decision was not

clearly erroneous. *See Carroll v. Ark. Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004).

Affirmed.

GRIFFEN and MARSHALL, JJ., agree.